

Attorney Docket: 030563  
U.S. Application No. 10/740,744 Art Unit 2179  
Response to August 28, 2007 Final Office Action

### **REMARKS**

The Assignee respectfully requests reconsideration in response to the final office action mailed August 28, 2007. The Assignee respectfully submits that the proposed combination of *Fado*, *Brockway*, and/or *Matthew* "teaches away" and cannot support a *prima facie* case for obviousness.

Claims 1-23 are pending in this application.

#### **Objection to Claim 4**

The Office objected to claim 4 for a grammatical mistake. The word "Bvideo" has been replaced with "video." Examiner Tran is thanked for noting this mistake.

#### **Rejection under § 101**

The Office rejected claim 11-16 under 35 U.S.C. § 101 for claiming non-statutory subject matter. Independent claim 11 has been amended to recite a "computer readable media having stored thereon a software wizard program." Dependent claims 12-16 have been similar amended. Examiner Tran is again thanked for this suggestion.

#### ***Fado* "Teaches Away"**

Any proposed combination involving *Fado* "teaches away" from the pending claims. "A reference that 'teaches away' from the claimed invention is a significant factor" when determining obviousness. See M.P.E.P. at § 2145 (X)(D)(1). A reference must be considered as a whole, including portions that lead away from the claimed invention. See *id.* at § 2141.02; see also *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 220 U.S.P.Q. (BNA) 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). "It is improper to combine references where the references teach away from their combination." M.P.E.P. at § 2145 (X)(D)(2). If the proposed combination

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changes the principle of operation of the prior art being modified, then the teachings of the references are not sufficient to support a *prima facie* case. See M.P.E.P. at § 2143.01.

The *prima facie* cases all require impermissible changes to *Fado's* principle of operation. *Fado* only polls a device port that has been manually selected by a user. *Fado* does not poll "all" input ports, as all the independent claims recite. Because *Fado* only polls the device port that has been manually selected by the user, *Fado's* principle of operation must be impermissibly changed to support the *prima facie* cases.

*Fado* provides an explanation. *Fado* explains a microphone test procedure. See U.S. Patent 6,266,571 to *Fado, et al.* at column 9, lines 54-56 and at column 10, lines 57-60. The "user is instructed to remain silent" and a room noise level is recorded. *Id.* at column 11, lines 5-11. "The user is instructed to recite a phrase into the microphone." *Id.* at column 11, lines 14-15. *Fado's* tool compares signal and noise levels. *Id.* at column 11, lines 24-32. "If the microphone test is not successful," the user is reminded of the proper connection. See U.S. Patent 6,266,571 to *Fado, et al.* at column 11, lines 35-40 (emphasis added). A GUI displays a picture "depending upon the user's prior selection of an output audio device." *Id.* at column 11, lines 40-41 (emphasis added). If a retest is unsuccessful, a power adapter and/or battery adapter for the microphone may be tested. See *id.* at column 11, line 50 through column 12, line 23. A GUI displays pictures "correspond[ing] to audio output device selected by the user." *Id.* at column 12, lines 23-31 (emphasis added). *Fado* continues to explain that when the tool cannot adjust the microphone's audio level, the user may readjust sound card parameters. See U.S. Patent 6,266,571 to *Fado, et al.* at column 13, lines 52-57. FIG. 47 illustrates that when the microphone test is unsuccessful, a GUI instructs the user to re-check that the microphone is connected to the "correct jack." See U.S. Patent 6,266,571 to *Fado, et al.* at FIG. 47 (emphasis added). See also *id.* at column 14, lines 65-67.

*Fado*, then, "teaches away" from the pending claims. All the independent claims recite features for polling "all" input ports. Because *Fado* only polls a device port that has been manually selected by a user, *Fado's* principle of operation must be impermissibly changed to

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support the *prima facie* cases. Because the patent laws forbid changing a principle of operation to support a *prima facie* case, *Fado* cannot support a *prima facie* case for obviousness. All the *prima facie* cases for obviousness must fail, so the Office is respectfully requested to remove the § 103 final rejections of the pending claims.

***Fado & Brockway* "Teach Away"**

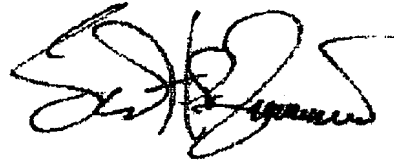
Any proposed combination involving *Fado* and *Brockway* "teaches away" from their combination. As the above paragraphs explained, *Fado* only polls a device port that has been manually selected by a user. *Brockway*, in contradistinction, describes a client that "periodically polls its physical I/O ports for the existence of a connected peripheral device." U.S. Patent 6,789,111 to Brockway, *et al.* at column 2, lines 50-53. *See also id.* at column 2, line 63 through column 3, line 2. An "automatic detection unit" detects peripheral devices connected to the client. *Id.* at column 4, lines 58-61. "A Plug and Play system is designed to continuously monitor I/O ports." *Id.* at column 5, lines 63-67 (emphasis added). *See also id.* at column 6, lines 1-10. Even if the client does not have "Plug and Play" capability, the client still has a "peripheral detection unit" that queries the I/O/ ports "one at a time" to identify peripheral devices. *Id.* at column 7, lines 12-30 (emphasis added).

*Fado* and *Brockway*, then, "teach away" from their combination. *Fado* only polls a device port that has been manually selected by a user, while *Brockway*, in contradistinction, continuously/automatically polls the I/O ports for the existence of a peripheral device. Because *Fado* and *Brockway* "teach away" from their combination, any proposed combination of *Fado* and *Brockway* cannot support a *prima facie* case for obviousness. All the *prima facie* cases for obviousness must fail, so the Office is respectfully requested to remove the § 103 final rejections of the pending claims.

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If any issues remain outstanding, the Office is requested to contact the undersigned at  
(919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

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